



FOR OFFICIAL USE ONLY

GSA Federal Acquisition Service

Revised July 10, 2020

FAS POLICY AND PROCEDURE (PAP) 2016-11

MEMORANDUM FOR ALL FAS ACQUISITION ACTIVITIES

FROM: MARK J. LEE
ASSISTANT COMMISSIONER

OFFICE OF POLICY AND COMPLIANCE (QV)

SUBJECT: Transactional Data Reporting - Federal Supply Schedule
Program Implementation

1. Purpose. This policy and procedure (PAP) directive provides guidance to contracting officers (COs) regarding implementation of the Transactional Data Reporting (TDR) initiative under the Federal Supply Schedule (FSS) program.
2. Background. On June 23, 2016, a final rule was published in the Federal Register for [General Services Administration Acquisition Regulation \(GSAR\) Case Number 2013-G504 Transactional Data Reporting](#). The final rule amended the GSAR to include a clause that requires vendors to report transactional data (also known as “prices-paid” data) from orders placed against FSS contracts. This new clause – Alternate I to GSAR clause [552.238-80 Industrial Funding Fee and Sales Reporting](#) – will be introduced in phases, beginning with a pilot for select Subcategories and Special Item Numbers (SINs), and will be paired with changes to existing requirements for Commercial Sales Practices (CSP) disclosures and GSAR clause [552.238-81 Price Reductions](#) basis of award monitoring, resulting in a significant burden reduction for participating FSS contractors.

This change is aimed at improving GSA’s ability to provide best value for its customer agencies and for the taxpayer. For FSS COs, this means you will primarily be utilizing horizontal price comparison techniques with data GSA already possesses for the price analysis, negotiation, and award of FSS contracts included in the TDR Pilot. These new techniques will drive dynamic competition and improve the value of FSS program overall.

To date, GSA has relied on a “vertical” pricing model to establish price reasonableness on its FSS contracts, i.e., comparing a vendor’s prices and price-

related terms and conditions with those offered to its other customers. Going forward, the availability of prices-paid data will facilitate GSA's move to a "horizontal" pricing model, where a vendor's prices are analyzed in comparison to market prices for the same items.

3. Effective Date. Date of signature.

4. Termination Date. This PAP terminates when cancelled/moved to "inactive" status in the Acquisition Policy Library.

5. Applicability. This PAP applies to all FAS acquisition activities awarding and administering FSS contracts. It does not apply to Department of Veterans Affairs acquisition activities.

6. Cancellation. This revision replaces PAP 2016-11 dated 8/10/2016, and the revision to PAP 2016-11 dated 11/7/2018.

7. Reference to Regulations/Policy.

- Federal Acquisition Regulation (FAR)
 - [2.101](#) *Definitions*
 - [Subpart 15.4](#) *Contract Pricing*
- General Services Administration Acquisition Manual (GSAM)/GSAR
 - [507.105](#) *Contents of acquisition plans*
 - [538.270-1](#) *Evaluation of offers without access to transactional data*
 - [538.270-2](#) *Evaluation of offers with access to transactional data*
 - [538.271](#) *FSS contract awards*
- GSAR Clauses/Provisions
 - [552.215-72](#) *Price Adjustment – Failure to Provide Accurate Information*
 - [552.216-70](#) *Economic Price Adjustment – FSS Multiple Award Schedule Contracts*
 - [552.238-80](#) *Industrial Funding Fee and Sales Reporting*
 - [552.238-81](#) *Price Reductions*
 - [552.238-82](#) *Modifications (Federal Supply Schedules)*
 - [CSP-1](#) *Commercial Sales Practices Format*
- FAS Clauses/Provisions
 - [I-FSS-969](#) *Economic Price Adjustment – FSS Multiple Award Schedule (Alternate II)*
 - [SCP-FSS-001](#) *Instructions Applicable to All Offerors*

8. Instructions/Procedures.

A. Overview. Transactional data reporting requirements have been rolled-out on a pilot basis. The pilot's effectiveness will be thoroughly assessed before a decision is made regarding full implementation across the FSS program. Under TDR Pilot contracts, a new transactional data reporting clause, Alternate I of GSAR clause [552.238-80 Industrial Funding Fee and Sales Reporting](#), is paired with changes to FSS pricing disclosure requirements. Specifically, TDR Pilot vendors are no longer required to provide CSP disclosures with offers or modification requests, and no longer subject to GSAR clause [552.238-81 Price Reductions](#) tracking customer requirements (a new Alternate I version of the *Price Reductions* clause is included in the contract instead).

B. Pilot. The TDR Pilot was launched in August 2016. A current listing of eligible TDR Pilot Subcategories/SINs can be found in the Multiple Award Schedule solicitation (47QSM20R0001).

Originally, participation in the TDR Pilot was mandatory for vendors with contracts awarded under specified Schedules or SINs. However, in November 2017, the TDR Pilot changed so that participation became voluntary for all new offerors and certain eligible existing contractors. This meant that new offerors proposing TDR Pilot SINs were no longer required to participate in the TDR Pilot - participation became fully optional. In addition, eligible existing TDR Pilot contractors were provided a one-time opportunity to leave the pilot. This opportunity was offered to contractors that were enrolled in the pilot during the time period that participation was mandatory. The window of opportunity for eligible existing contractors to opt out of the pilot is now closed. Any contractors currently participating in the TDR Pilot are required to continue participation until its conclusion.

Participation continues to be voluntary for new offerors, and there will be no further opportunities to leave the pilot.

C. TDR Clauses and Provisions. Several clauses are unique to TDR Pilot contracts and replace the standard FSS Program version (e.g., revising language to delete the requirement to submit CSP data).

1.) The following standard FSS Program clauses do NOT apply to TDR Pilot contracts:

- [552.215-72 Price Adjustment – Failure to Provide Accurate Information](#)
- [552.216-70 Economic Price Adjustment – FSS Multiple Award Schedule Contracts - Alternate I](#)
- [552.238-80 Industrial Funding Fee and Sales Reporting](#)
- [552.238-81 Price Reductions](#)

- [552.238-82 Modifications \(Federal Supply Schedules\) - Alternate I](#)
- [I-FSS-969 Economic Price Adjustment – FSS Multiple Award Schedule](#)
- [CSP-1 Commercial Sales Practices Format](#)

2.) The following clauses are applicable only to TDR Pilot contracts (summary of unique terms and conditions provided for each):

- [552.216-70 Economic Price Adjustment – FSS Multiple Award Schedule Contracts - Deviation II](#) - This version removes references to CSP data submission and paper price lists. It also includes minor administrative corrections.
- [552.238-80 Industrial Funding Fee and Sales Reporting - Alternate I](#) - This version adds transactional data reporting requirements, to include how and where to report the data, how often, and the specific data elements that are required.
- [552.238-81 Price Reductions - Alternate I](#) - This version removes the tracking customer requirements, but retains language addressing temporary, permanent, and voluntary price reductions.
- [552.238-82 Modifications \(Federal Supply Schedules\) - Alternate II](#) - This version removes the requirement for submission of CSP data when requesting addition of items/SINs.
- [I-FSS-969 Economic Price Adjustment – FSS Multiple Award Schedule - Alternate II](#) - This version removes references to submission of CSP data, the *Price Reductions* clause, and the requirement to submit electronic updates before any increases will be effective. Contract price increases are applied to orders issued on or after the effective date of the contract modification.

D. Evaluation of Pricing and Price-Related Factors. For TDR Pilot offers, COs shall evaluate pricing in accordance with GSAM [538.270-2 Evaluation of offers with access to transactional data](#), which is summarized below. This means Schedule price evaluation will now be based primarily on utilizing horizontal price comparison techniques (relative competitiveness of the vendor's price to other vendors' prices) rather than the prior vertical price analysis (comparing a vendor's prices to their most favored customer prices). The following guidance will lead FSS COs through this change.

1.) Utilize the techniques in FAR [15.404](#) when evaluating pricing.

2.) When evaluating offers and establishing negotiation objectives, utilize information according to the following order of preference:

- Data that is readily available, such as prices-paid information on contracts for the same or similar items
- Contract-level prices on other FSS contracts or other government-wide contracts for the same or similar items
- Commercial data sources that consolidate and normalize prices offered by commercial vendors to the general public to compare prices for the same or similar items (e.g., horizontal price analysis tools).

If you cannot determine the prices offered to be fair and reasonable based on readily available data, perform market research to compare prices for the same or similar items. If you cannot determine the prices offered to be fair and reasonable based on readily available data or market research, request and perform an analysis on other than certified cost or pricing data.

Readily Available Data

1.) Prices-Paid Information. COs shall consider prices-paid information when negotiating Schedule prices when there is sufficient prices-paid data available for the same or similar items. Sufficient data means at least two similar or identical items with prices-paid data. The CO shall then determine if the prices-paid data is analogous to the offered item. COs shall use their best judgment and examine factors such as –

- How current the data is
- Terms and conditions of the acquisitions producing the prices-paid data (e.g., warranty, delivery, security clearances, hazard pay, wage determinations, prompt payment discounts, etc.)
- Quantities purchased, market, or economic factors
- Any other material factors affecting the prices-paid data (e.g., Blanket Purchase Agreement (BPA) versus non-BPA pricing, temporary price reductions/sales, differing labor qualifications, etc.)

If the prices-paid data does not contain any material differences and the items are similar, the CO can proceed to utilize this data in its negotiation with the offeror for this item. If the prices-paid data is similar but material differences exist, then the CO must adjust the prices-paid data to account for material differences between the similar item and the item being offered. COs may seek technical advice from Acquisition-Center-level experts and category managers when analyzing similar items, or commercial items that are “of a type” or requiring minor modifications, to ascertain the magnitude of changes required and to assist in pricing the required changes.

COs shall use their business judgment when setting negotiation objectives based on this prices-paid data. COs shall document in the [pre-negotiation objective memorandum \(PNO\)](#): (1) that the prices-paid data is sufficiently similar, (2) whether any material differences exist, and (3) if so, how the prices-paid data was adjusted for a valid comparison.

An example of this is an offeror that is the manufacturer of a new laptop computer. Let's assume this item has not been sold to the general public or the Government to date. First, the CO will ensure that the item meets the definition of "commercial item," which in this case we'll assume that it does. Given that there are no sales, a similar item comparison may be a viable means of determining price reasonableness. The CO (or a technical expert) will need to analyze the technical components (CPU - RAM, processor speed; monitor - size, resolution; keyboard; CD; weight; software; etc.) of the offered item in order to enable the identification of "comparable" products for which we have pricing to use as a basis of comparison. Additionally, the terms and conditions (warranty, delivery time, etc.) associated with the "comparable" items need to be considered in the analysis. Remember to document the comparison to support the conclusion reached.

2.) Contract-Level Prices/Commercial Data Sources. The CO shall consider available horizontal price analysis tool data, as appropriate. Remember that horizontal price analysis tools are used only as part of a larger negotiation objective development strategy that seeks fair and reasonable pricing. Output from these pricing tools should clearly support the pricing comparisons made. COs should ensure that comparisons included in establishing negotiation objectives or price analysis are detailed and fully documented in order to demonstrate that the pricing comparisons relied upon are the same or similar to the products or services offered.

The GSAM does not provide a preference for prices-paid versus contract-level or commercial data, just that the CO must consider these readily available data sources prior to requesting other than certified cost or pricing data. COs should also remember to distinguish between contract-level pricing as opposed to prices-paid data (i.e., order-level pricing) in their price analysis. COs should use their business judgment in deciding how best to negotiate based on this readily available data, documenting their rationale in the PNO.

Once negotiations have concluded, COs shall document in the [price negotiation memorandum \(PNM\)](#): (1) what data was utilized (i.e., prices-paid or contract-level), (2) how it was used based on the above guidance in determining a fair and reasonable price, and (3) how the data was adjusted to allow for a valid comparison (if applicable).

Be sure to fully explain how horizontal price analysis tool results were sufficiently similar to the pricing on offered items; whether material differences existed between results returned on offered items; how prices-paid data (if available) was adjusted for a valid

comparison; and how any other information obtained by the CO was utilized to determine pricing fair and reasonable and to develop negotiation objectives. All analysis should be fully documented, including detailed output from horizontal price analysis tools. Include all relevant documents as attachments to the PNM (or refer to the location where documentation can be reviewed in the contract file).

Market Research

The CO can perform market research to find prices for an identical or similar item. Possible sources include but are not limited to prices on other government-wide or multiple agency IDIQ contracts, prices available on commercial websites (e.g., Amazon), and commercial catalogs. The CO shall perform the same analysis as detailed above for readily available data (i.e., how current the data is, terms and conditions of comparison data, etc.) and shall distinguish between pricing data that is pre-award versus post-award (prices-paid data). COs shall document in the PNM: (1) that the data is sufficiently similar, (2) whether any material differences exist, and (3) if so, how the data was adjusted for a valid comparison.

Other Than Certified Cost or Pricing Data

If a CO cannot determine an item fair and reasonable based on readily available data or market research, the CO can perform a price analysis based on other than certified cost or pricing data. So what kind of information can a CO request?

A CO cannot request a CSP disclosure ([CSP-1 Commercial Sales Practices Format](#)) or use CSP terminology such as “most favored customer,” “current, accurate, and complete,” etc. However, a CO can request other than certified cost or pricing data provided by the offeror in accordance with FAR [15.404-1\(b\)\(2\)\(vii\)](#).

Data other than certified cost or pricing data is only to be requested when there is no other means to determine prices fair and reasonable, and is defined in FAR [2.101](#) as, “... pricing data, cost data, and judgmental information necessary for the contracting officer to determine a fair and reasonable price or to determine cost realism. Such data may include the identical types of data as certified cost or pricing data, consistent with Table 15-2 of 15.408, but without the certification. The data may also include, for example, sales data and any information reasonably required to explain the offeror’s estimating process, including, but not limited to: (1) The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and (2) The nature and amount of any contingencies included in the proposed price.”

Additional data may only be requested to the extent necessary to determine prices fair and reasonable. Start by asking the vendor what they can provide to support price reasonableness then work to requesting specific data as needed. COs should use their business judgment on the amount of information required to make a fair and reasonable price determination. COs shall then set negotiation objectives for these items based on

this information. COs shall ensure that PNO and PNM documentation reflects the information used to reach a fair and reasonable price determination.

If a fair and reasonable price determination cannot be made based on any of the above approaches, the CO can request information to support a cost analysis. For additional information, see [Procurement Information Notice \(PIN\) 2012-05 Use of Cost Analysis When Evaluating Federal Supply Schedule Offers](#).

E. Transactional Data Reporting and Industrial Funding Fee Remittance. Vendors participating in the TDR Pilot are required to electronically report the data 30 days after the end of the preceding month. Reporting instructions are posted on the Vendor Support Center (VSC) website (<https://vsc.gsa.gov>).

F. Transactional Data Elements. As detailed under GSAR clause [552.238-80 Industrial Funding Fee and Sales Reporting](#) (Alternate I), vendors will be reporting the following transactional data elements, as applicable:

- Contract or BPA Number, Delivery / Task Order Number / Procurement Instrument Identifier (PIID)
- Non-Federal Entity
- Description of Deliverable
- Manufacturer Name
- Manufacturer Part Number
- Unit of Measure (each, hour, case, lot)
- Quantity of Item Sold
- Universal Product Code
- Price Paid per Unit
- Total Price
- Special Item Number

If additional data elements are needed, the Schedule Owner must coordinate with the applicable category manager and obtain approval from the Head of the Contracting Activity (HCA) and the Senior Procurement Executive (see GSAM [507.105\(c\)\(3\)](#) for details).

G. Pilot Cancellation. Should the TDR Pilot be cancelled, the following procedures should be followed to bring pilot contracts back to their legacy state.

TDR Pilot contractors will be required to submit -

- A completed price proposal template that includes all currently awarded pricing, as well as Most Favored Customer (MFC) information
- A completed CSP disclosure ([CSP-1 Commercial Sales Practices Format](#))

- A copy of their current price list or catalog, if applicable
- Other information deemed necessary by the CO

The CO must -

- Make an affirmative determination of price reasonableness in accordance with GSAR [538.270-1 Evaluation of offers without access to transactional data](#). This section aligns with the traditional price analysis methods COs are already familiar with (i.e., reviewing the CSP disclosure, seeking equal to or better than the best price given to the MFC, and establishing a price/discount relationship between the Government and the basis of award customer/category).
- When making a determination that prices are fair and reasonable in accordance with FAR Subpart [15.4](#) (see GSAR [538.271](#)), COs should still utilize to the maximum extent practicable any contract-level pricing data that is relevant and available (e.g., via horizontal price analysis tools). The CO may request supporting pricing documentation (e.g., invoices, contracts, quote sheets) for proposed products/services if necessary.
- Establish a basis of award customer/category and price discount relationship in accordance with GSAR clause [552.238-81 Price Reductions](#).
- Fully document the contract file with the specifics of the change, the evaluation, the rationale for the determination of price reasonableness, the basis of award/price discount relationship, etc.
- Prepare a Pre-Negotiation Memorandum, Price Negotiation Memorandum, and Final Proposal Revision if renegotiation of awarded pricing is necessary. Utilize the templates in [PAP 2020-02 Mandating the Use of Pre-Negotiation, Price Negotiation and Final Proposal Revision Templates for the Federal Supply Schedules Program](#). (A Memo to File can be used if awarded pricing does not need to be renegotiated.)
- Utilize eMod to bilaterally modify the contract.
 - The effective date of the modification will be the first day of the next business quarter. Basis of award tracking requirements under the *Price Reductions* clause and quarterly sales reporting begin as of this effective date. However, legacy evaluation procedures can be utilized beginning on the date of modification *execution*.
 - Contractors will be required to continue to report sales on a monthly basis until the end of the business quarter during which the modification is executed. Starting with the next business quarter, the contractor will begin

reporting sales on a quarterly basis.

- The modification must designate all TDR-specific clauses as "not applicable" and replace them with their legacy/non-TDR equivalents as of the date the modification is executed. This means that, as of the date of execution, CSP requirements go into effect for certain modification requests and for the exercise of contract option periods.
- Liability under the *Price Reductions* clause begins as of the effective date of the modification, i.e., the first day of the next business quarter.

9. Questions & Answers.

Q1. Can *any* new offeror or existing contractor voluntarily opt-in to participate in the TDR Pilot?

A1. No - Only vendors under eligible TDR Pilot Subcategories/SINs can participate in the pilot.

Q2. What kind of transactional (prices-paid) data will be available to COs when evaluating offers under the pilot?

A2. Reported transactional data will be used to generate dashboards that represent granular (individual item) prices-paid statistics such as mean, median, and quartile prices paid in a format that is adjustable for order quantity. Additional filters such as manufacturer name and keyword wildcard match filters (on product name/description) will enable macro-level analysis.

Q3. Can I share transactional data with a vendor?

A3. If necessary, you can verify the vendor's *own* reported transactional data, but you may not disclose the reported transactional data of any other vendor. The exception is if another vendor requests transactional data via a Freedom of Information Act (FOIA) request. In that case, such transactional data that is not exempt from release under FOIA may be released following GSA FOIA response procedures.

Q4. Can I still ask the vendor for supporting documentation such as invoices, dealer/distributor information, quantities sold to federal customers, etc.?

A4. Yes, but only to the extent necessary to determine the price fair and reasonable. This means that you would request this information only in cases where prices could not be determined fair and reasonable based on readily available data (prices-paid, contract-level prices, etc.), market research, and/or other than certified cost and pricing data.

Q5. How will economic price adjustments work?

A5. For contractors required to report transactional data, the alternate/deviated language in GSAR clause [552.216-70 Economic Price Adjustment – FSS Multiple Award Schedule Contracts](#) and FAS clause [I-FSS-969 Economic Price Adjustment – FSS Multiple Award Schedule](#) eliminates the requirement to submit CSP data and removes references to *Price Reductions* clause basis of award requirements. COs are to review submitted catalog and market indicator data and determine the price reasonableness of the requested increase based on readily available data (prices- paid, contract-level prices, etc.), market research, other than certified cost and pricing data, and any other data the CO deems necessary.

Q6. How do I evaluate pricing for offers that are not part of the TDR Pilot?

A6. Pricing for non-pilot offers is to be evaluated in accordance with GSAR [538.270-1 Evaluation of offers without access to transactional data](#). This section aligns with the traditional price analysis methods you are already familiar with, i.e., reviewing the CSP disclosure, seeking equal to or better than the best price given to the most favored customer, and establishing a price/discount relationship between the Government and the basis of award customer/category. When making a determination that prices are fair and reasonable in accordance with FAR Subpart [15.4](#) (see GSAR [538.271](#)), COs should still utilize to the maximum extent practicable any contract-level pricing data that's relevant and available.

Q7. What about current contractors that opt to voluntarily participate in the pilot via the mass modification? When does their liability end under the *Price Reductions* clause (i.e., the established basis of award, maintenance of the price/discount relationship, etc.)?

A7. The requirement to track the basis of award pricing relationship in accordance with the *Price Reductions* clause ends as of the effective date of the modification. The effective date will be set to align with the first day of the next applicable sales quarter (e.g., October 1, January 1, April 1, or July 1), to avoid the complications that would result from a mid-quarter changeover (related not just to liability but also differing industrial funding fee and transactional data reporting terms).

For example, if the underlying FSS contract is modified on December 14th to incorporate transactional data reporting terms and conditions, liability under the *Price Reductions* clause would end - and the obligation to begin capturing transactional data would begin - as of the effective date of the modification, January 1st. To illustrate further, let's say the contractor has an existing order - an order with a base year and four one-year options, with the base year ending on December 31st. If the *Price Reductions* clause is triggered on December 17th, the contractor is required to notify the GSA CO and the ordering activity CO so that the price reduction can be included in the option period. If, however, the price reduction occurs on January 2nd, there is no *Price*

Reductions clause language to trigger, since the requirement to track the basis of award pricing relationship ended on January 1st, the effective date of the modification. As of the modification effective date, the tracking language is removed from the contractor's contract, no price reductions can be triggered, and tracking is no longer required on existing orders.

10. Signature:

DocuSigned by:

0B572B8D8EB447F...

7/10/2020

Mark J. Lee
Assistant Commissioner
Office of Policy and Compliance

Date

Author: Denise Alley